

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition of U S Telecom for Forbearance)	WC Docket No. 18-141
Pursuant to 47 U.S.C. §160(c))	
)	
Regulation of Business Data Services for)	WC Docket No. 17-144
Rate-of-Return Local Exchange Carriers)	
)	
Business Data Services in an Internet)	WC Docket No. 16-143
Protocol Environment)	
)	
Special Access for Price Cap Local)	WC Docket No. 05-25
Exchange Carriers)	
)	
AT&T Corporation Petition for Rulemaking)	RM-10593
to Reform Regulation of Incumbent Local)	
Exchange Carrier Rates for Interstate)	
Special Access Services)	

ADDITIONAL COMMENTS OF ALASKA COMMUNICATIONS

Alaska Communications¹ hereby responds to the Wireline Competition Bureau’s April 15 Public Notice inviting “focused public comment on the extent to which the *April Data Tables* inform the extent of competition and competitive pressure in the market for lower speed (DS3 and below) time division multiplexing (TDM) transport services in price cap areas.”² Alaska Communications provides TDM-based transport in six study areas in Alaska.³ The company

¹ In these comments, “Alaska Communications” signifies the four incumbent local exchange carrier (“ILEC”) subsidiaries of Alaska Communications Systems Group, Inc., each subject to price cap regulation under FCC rules: ACS of Alaska, LLC, ACS of Anchorage, LLC, ACS of Fairbanks, LLC, and ACS of the Northland, LLC.

² *Wireline Competition Bureau Seeks Focused Additional Comment In Business Data Services and U S Telecom Forbearance Petition Proceedings and Reopens Secure Data Enclave*, Public Notice, WC Docket Nos. 18-141, 17-144, 16-143, 05-25; RM-10593 (Wireline Competition Bur., rel. April 15, 2019) (the “*April 15 Public Notice*”).

³ As used herein, “TDM-based transport services” includes all non-packet-switched inter-office incumbent local exchange carrier (ILEC) transmission services as well as the ILEC service known as “IXC channel terminations” (connecting an interexchange carrier network to an

also provides more advanced, packet-based broadband transport services in Alaska. The company has participated in this proceeding at each comment stage, and has provided detailed information about competition in the Alaska BDS market.⁴

The April Data Tables Do Not Capture the Extent of Facilities-Based Competition In Alaska's More Remote Price Cap Wire Centers

For several reasons, the information in the *April Data Tables* does not appear to accurately describe the extent of competitive facilities near Alaska Communications wire centers, particularly in the more remote price cap areas. In reality, facilities-based competition in Alaska is robust and growing, even outside urban centers, obviating any need for FCC regulation of TDM-based transport services.

First, publicly-available data confirm the availability of competitive fiber in many of the Bush communities where the *April Data Tables* show no fiber-based competitor within a half-mile of the local Alaska Communications wire center. For example, three of the listed wire centers are in communities that are located on the fiber portion of the TERRA transport network owned by GCI Communications Corp. ("GCI"), and are thus known to have been connected to competitive

ILEC network) but not end-user channel terminations. *See Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers, et al.*, WC Docket No. 17-144, Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, FCC 18-146, ¶147 (rel. Oct. 24, 2018).

⁴ *E.g., Business Data Services in an Internet Protocol Environment*, Comments of Alaska Communications, WC Docket No. 16-143, *et al.*, Declaration of David Eisenberg (filed June 28, 2016); Reply Comments of Alaska Communications, WC Docket No. 16-143, *et al.*, Declaration of David Blessing (filed August 9, 2016); Letter from Karen Brinkmann, Counsel to Alaska Communications, WC Docket No. 16-143, *et al.*, Supplemental Declaration of David Blessing, Declaration of William Bishop, Declaration of Beth Barnes (filed Sept. 2, 2016); Supplemental Comments of Alaska Communications, WC Docket No. 16-143, *et al.* (filed Jan. 30, 2019) ("Alaska Communications Supplemental Comments").

fiber facilities as early as 2010.⁵ Given the small size of these communities, it is inconceivable that GCI's fiber is more than a half-mile from the nearest Alaska Communications central office.

Second, the *April Data Tables* do not indicate in which wire centers Alaska Communications *itself* lacks fiber facilities. Many Alaska Bush communities lack not only competitive fiber, but ILEC fiber as well. They nonetheless are competitive. In remote areas where BDS demand is low, it is often the case that Alaska Communications and its competitors alike make BDS offerings (typically limited to DS-1s) available via microwave, undersea cable and satellite facilities. The absence of terrestrial fiber in these remote Alaska locations does not correlate to a lack of competition.

Third, in many wire centers shown in the tables as lacking competitive fiber within a half-mile, the absence of fiber-based *middle mile* facilities is the real competitive driver – not the absence of local fiber facilities. In a remote community such as Yakutat, a competitor easily could provide a DS-1 special access connection between the ILEC's central office and an IXC's microwave or satellite point of presence, but no high-capacity inter-office transport would be available to carry the traffic to or from that community. The absence of terrestrial middle mile capacity is the real disincentive to competitive entry in such locations – not any perceived local bottleneck.

Fourth, the *April Data Tables* appear to be devoid of any data for Alaska that “show the distances from competitive provider fiber to . . . end user buildings with BDS demand in price

⁵ See, e.g., GCI Blog Post, “We Are Making Progress – Together” (July 28, 2016), *available at*: <http://www.arctic.gci.com/blog/2016/7/28/we-are-making-progress-together> (2010 TERRA map showing connected communities).

cap areas,” as suggested by the *April 15 Public Notice*.⁶ It is not clear whether this is an oversight or flaw in the data enclave, an intentional omission arising from the competitive structure of Alaska’s BDS markets, or the result of the dearth of Alaska-related information in the special access data collection.⁷ To the extent the omission of this data represents the assessment of the Commission’s Office of Economics and Analytics that there is no BDS demand in Alaska Communications’ service areas, that assessment would be erroneous. Because the company, in fact, is providing TDM-based transport services in all six of its price cap study areas, it knows that such demand exists throughout its price cap service areas, although this demand is steadily declining, as in the rest of the nation.⁸

Low Demand for TDM Transport Does Not Justify Regulating the Service in Alaska Wire Centers

As Alaska Communications previously stated in these proceedings, it competes for BDS customers with a number of other service providers, including GCI, AT&T, Verizon, Matanuska

⁶ *April 15 Public Notice* at 1.

⁷ Alaska Communications previously commented in this proceeding on the inadequacy of the special access data collection with respect to supply and demand in Alaska. *See supra* note 4. *See also Business Data Services in an Internet Protocol Environment*, Letter from Karen Brinkmann, Counsel to Alaska Communications, WC Docket No. 16-143 *et al.* (filed April 13, 2017), pp. 2-4 (observing, *inter alia*, that GCI’s facilities-based presence was not fully reflected in the special access data collection).

⁸ Letter from Karen Brinkmann, Counsel to Alaska Communications, WC Docket No. 16-143, *et al.* (filed Sept. 2, 2016), Supplemental Declaration of David Blessing, Attachment 1 (showing DS-1 demand in all six study areas as of July 1, 2016). *See generally Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, Report and Order, 32 FCC Rcd 3459, 3463 (2017) (the “2017 BDS Order”), *aff’d in part, vacated and remanded in part sub. nom Citizens Telecoms. of Minn., LLC v. FCC*, 901 F.3d 991 (8th Cir. 2018) (“any prior advantage an incumbent might have enjoyed at lower bandwidths is now less competitively relevant in light of customer demand that attracts a number of traditional and non-traditional competitors that are improving legacy cable networks and expanding with new facilities to meet demand”).

Telecom Association, DRS Technologies, and others.⁹ In September 2016, Alaska Communications submitted confidential data showing that Alaska Communications had about 18 percent market share while GCI had roughly a 62 percent market, with other competitors sharing the remaining 20 percent.¹⁰ By 2017, GCI's share of the market for BDS had risen to roughly 65 percent, while Alaska Communications' market share has held roughly steady at 18 percent.¹¹ Recent analysis shows that each of Alaska Communications' four ILECs continues to hold only a minority share of the BDS market in its own service territory.¹²

In the *2017 BDS Order*, the Commission found, “[t]o a large extent in the business data services market, the competition envisioned in the Telecommunications Act of 1996 has been realized.”¹³ The Commission found no material justification to distinguish between TDM and IP-based technologies.¹⁴ The Commission observed in the *Business Data Services Order* that substitution between TDM-based and IP-based BDS has been largely one-way in nature, with

⁹ *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, Letter from Karen Brinkmann, Counsel to Alaska Communications to Marlene H. Dortch (filed Sept. 2, 2016), Declaration of Bill Bishop at 2.

¹⁰ *Id.*, Declaration of Beth R. Barnes at 2.

¹¹ Alaska Communications Supplemental Comments at 7.

¹² *Id.*

¹³ *2017 BDS Order*, *supra*, note 8, at ¶5.

¹⁴ The Commission found that “circuit- and packet-switched business data services that offer similar speed, functionality, and quality of service characteristics fall within the same product markets.” *2017 BDS Order* ¶ 26; *see also id.* ¶ 24 (“Functionally, TDM and packet-based services are broadly interchangeable in the business data services realm as both are used to provide connectivity for data network and point-to-point transmissions and both services can be delivered over the same network infrastructure. Incumbent and competitive LEC providers offer both types of services to similar types of customers and their marketing materials juxtapose these two technologies against each other. Customers of TDM-based services are also switching to packet-based services. And commenters representing suppliers agree, with limited exception, the services, whether circuit-based or packet-based, are substitutes and in the same product market.”).

packet-based business data services steadily supplanting TDM substitutes.¹⁵ This observation accords with Alaska Communications' experience in its six study areas.

Putting aside the fact (as discussed above) that many of the communities where the *April Data Tables* show no fiber-based competitor within a half-mile of the local Alaska Communications wire center plainly *do* have competitive fiber present, the vast majority of those communities also lack significant demand for the ILEC's TDM-based BDS. In fact, Alaska Communications itself provides no DS-3 circuits whatsoever in any of the wire centers shown in the *April Data Tables* as "unserved" by local competitive fiber. Further, Alaska Communications provides DS-1 circuits in only *three* of those communities. DS-1 demand in those three wire centers totals fewer than 20 DS-1 circuits, all provisioned as channel termination service purchased by Alaska Communications' competitors. Alaska Communications provides *no* DS-1 or DS-3 inter-office transport in any of those wire centers.

With no present demand for DS-1 or DS-3 interoffice transport in the wire centers that the Office of Economics and Analytics shows as lacking competitive fiber, it makes little sense to impose *ex ante* price regulation or tariff requirements. This is particularly the case in light of

¹⁵ *Id.* at ¶ 25. Similarly, in the 2015 *USTA Forbearance Order*, the Commission granted relief from an array of regulations applicable to incumbent LECs on the premise that their provision of switched access services was steadily declining, as "many customers now purchase service from alternative platforms, including facilities-based and over-the-top VOIP providers as well as from competitive LECs." *Petition of U S Telecom for Forbearance from Enforcement of Obsolete ILEC Legacy Regulations*, Memorandum Opinion and Order, WC Docket Nos. 14-192 *et al.*, 31 FCC Rcd 6157, ¶28 (2015).

the Commission’s finding that any future demand that may arise in these communities is likely to be for packet-based alternatives, *not* circuit-switched DS-1 or DS-3 transport services.¹⁶

Moreover, eliminating unnecessary regulation of outmoded services will permit service providers to reduce the cost of compliance with tariffing requirements, and shift more of their resources to deployment of advanced networks and services, goals the Commission has endorsed.¹⁷ To the limited extent that customers in the so-called non-competitive Alaska wire centers continue to purchase DS-1 capacity (there is no DS-3 capacity being sold today in those wire centers), they do so using outdated technology. The equipment used in connection with these services is increasingly difficult and expensive to maintain. The equipment that can be employed with IP-based services allows for the provision of more robust services, enhanced features and functionalities, and far greater dependability. Policies that encourage deployment of IP-based services, both by stimulating demand and by eliminating unnecessary regulation, thus best serve the public interest.

¹⁶ *2017 BDS Order* ¶25 (finding that substitution between TDM-based and packet-based business data services has been largely one-way in nature, with packet-based business data services steadily supplanting TDM substitutes).

¹⁷ *See Petition of U S Telecom for Forbearance Pursuant to 47 U.S.C. §160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, Memorandum Opinion and Order, WC Docket No. 18-141, FCC 19-31, ¶1 (rel. April 15, 2019) (“we continue the Commission’s efforts to eliminate unnecessary, outdated, and burdensome regulations that divert carrier resources away from deploying next-generation networks and services to American consumers”) (hereinafter “*2019 Forbearance Order*”). *See id.* ¶29 (“We agree with U S Telecom that such costs divert resources away from publicly-beneficial projects, such as broadband deployment. We find that the public interest is better served by eliminating this burdensome regulatory obligation whose purpose can be satisfied through other existing regulatory obligations so that these incumbent LECs can free up these resources to devote to next-generation network and service deployment”) (citation omitted).

Less than one month ago, the Commission granted price cap LECs forbearance from legacy regulations on the basis of the increasingly competitive nature of the access market, with particular emphasis on competitive options for BDS in “large swaths of the country.”¹⁸ The Commission noted not only that the legacy regulations no longer were needed to protect consumers or promote competition, but also that such regulations can do significant harm in a competitive marketplace, burdening one type of service provider (the incumbent LEC) but not its competitors, and discouraging investment in more advanced technology and services.¹⁹ The same conclusion should compel the Commission to refrain from *ex ante* regulation of TDM-based transport services.

These factors support deregulation, not re-regulation, of TDM transport services to promote improvement of services, increased competition, and advancement of network capabilities.

Conclusion

Notwithstanding the incomplete nature of the *April Data Tables* in describing BDS supply and demand in Alaska price cap wire centers, all available data confirm that the Alaska price cap service territories enjoy robust competition for advanced BDS services. Low-capacity TDM-based transport services are being phased out, with competition available where demand remains, but most customers transitioning to more advanced services. For the reasons stated above, and consistent with Alaska Communications’ prior filings in these proceedings, the Commission should decline to impose *ex ante* regulation of the rates, terms, and conditions of

¹⁸ See *2019 Forbearance Order* ¶38, citing *2017 BDS Order*.

¹⁹ See *2019 Forbearance Order* ¶¶38, 41, 50.

price cap LECs' TDM-based transport services, and forbear from the tariffing requirements of Section 203 of the Communications Act with respect to these services.

Respectfully submitted,



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